

June 28, 1999

Mr. Warren Bell, PE  
Deputy Director  
Transportation & Environmental Services  
City Hall  
Post Office Box 178  
Alexandria, Virginia 22313

Dear Mr. Bell:

This letter provides the City with the Department's policy interpretation of whether the removal of vegetation within locally designated Resource Protection Areas (RPAs) is permitted under the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations). This issue arose early this year when the Department received several citizen inquiries about the removal of vegetation along the banks of a number of waterways in the City. The subject waterways are Cameron Run, Backlick Run and Holmes Run.

In consideration of this matter, Department staff met with City staff on January 5, 1999, and visited several areas along these waterways where vegetation was previously removed. It is understood that the City allows the removal of the vegetation along the banks of these waterways to ensure that flood waters may flow unimpeded, particularly during high flow events. While the Department recognizes the City's concern of flooding, the Regulations require the maintenance of natural vegetation along waterways for water quality purposes, and as such, the Department's policy interpretation is that the removal of vegetation for floodway management is not allowed pursuant to § 9VAC10-20-130.B and § 9VAC10-20-130.B.1 of the Regulations. Therefore, removal of vegetation for floodway management should not be allowed along waterways with natural banks. However, in areas that have been previously hardened, there may be extenuating circumstances which would warrant consideration through the City's exception process, on a case-by-case basis, to maintain the flood channel. The criteria to evaluate exceptions, outlined in § 9VAC10-20-160 of the Regulations and Section 13-120(B) of the City's Zoning Ordinance, require that the exception be the minimum necessary to afford relief, and that conditions upon the exception will be imposed to preserve the spirit and intent of the Chesapeake Bay Preservation Act. So, if an exception is in fact warranted, then consideration should be given to the imposition of appropriate mitigation measures, such as reestablishment or enhancement of vegetation at the top of the slope and extending it throughout the buffer area, thus implementing the retention and establishment provisions of § 9VAC10-20-130.B of the Regulations.

In support of the Department's policy interpretation, I refer you to the following sections of the

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Regulations. Section 9VAC10-20-130.B.1, provides that vegetation may be removed from the buffer area only under certain circumstances including: to provide for reasonable sight lines, access paths, general woodlot management, and best management practices under the specific circumstances outlined in §§ 9VAC10-20-130.B.1.a - 9VAC10-20-130.B.1.d.

During the field visit there was also an inquiry by your staff as to whether the 100-foot buffer should be measured from the edge of water/nontidal wetlands or from the top of the bank since two of the waterways have been modified for flood protection purposes. Section 9VAC10-20-80.B of the Regulations, provides that the buffer area is required along both sides of any tributary stream. Pursuant to the Department's previous guidance (see attached Information Bulletin #5), the buffer area along tributary streams is to be measured from the edge of ordinary high water or the edge of defined streambed. Therefore, the City's designation of the RPAs along these three waterways as being measured from the edge of the ordinary high water mark is appropriate.

I hope this letter provides the City with a clear understanding of the Department's policy interpretation of the Regulations as they pertain to removing vegetation in the buffer area. We would be happy to meet with you and members of your staff to discuss this issue further should you wish. If you want to set up a meeting, or if you have any questions about this letter, please call either Shawn Smith or Nadine Golgosky Barnes at 1-800-243-7229.

Sincerely,

Shepard Moon  
Acting Chief of Environmental Planning

Enclosure

3: Michael Clower  
Larry Gavin  
Nadine Golgosky Barnes  
Shawn Smith

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